

IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION

PENTHOUSE OWNERS ASSOCIATION, INC.

PLAINTIFF

VERSUS

CIVIL ACTION NO. 1:07CV568-HSO-RHW

CERTAIN UNDERWRITERS AT LLOYD'S, LONDON

DEFENDANT

**PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF INSURANCE DOCUMENTS**

COMES NOW Plaintiff Penthouse Owners Association, Inc. ("Plaintiff" or "Penthouse"), by and through counsel of record, and files this its *Motion to Compel Production of Insurance Documents*, and would show unto the Court the following, to wit: <sup>1</sup>

**I. INTRODUCTION**

Penthouse asks the Court to compel Defendants Certain Underwriters at Lloyd's, London (collectively referred to as "Defendants" or "Lloyd's") to supplement their initial disclosures to meet the requirements of Rule 26 (a)(1)(A)(iv). Penthouse has conferred with Defendants regarding this issue, but Defendants have refused to produce insurance agreements under which any insurer may be obligated to pay or indemnify any of the Certain Underwriters for a judgment or payment in this cause. Penthouse is entitled to those documents, and this motion to compel should be granted.

**II. FACTS**

1. This cause of action relates to Penthouse's insurance claim under its policy (Policy No. AL1111—"Penthouse's Policy") through Defendants. Penthouse's insured property was completely destroyed by Hurricane Katrina, and Defendants paid no insurance benefits to Penthouse related to its Katrina claim.

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<sup>1</sup> Penthouse respectfully asks that the Court waive the requirement of a separate memorandum of law in support of this motion because Penthouse's argument is completely contained herein.

2. Under Penthouse's Policy, eight "Names"<sup>2</sup> subscribe to the four contract numbers concerning the Policy, with those eight Names agreeing to share risk and accept premium's in accordance with Penthouse's Policy's *Collective Certificate Endorsement* and *Schedule of Participating Underwriters at Lloyd's*. (See D.E. 253, Exhibit "1," at CJ 000001947, 000001950-55).
3. On November 17, 2009, Penthouse sent a good faith letter to Defendants asking them to produce copies of all insurance policies under which an insurer may be obligated to pay a judgment or indemnify any of the Names for payments made to Penthouse in this matter. Defendants did not respond to that letter. Penthouse did not seek to compel those documents at that time because this matter was on appeal and this Court was temporarily without jurisdiction.
4. On August 11, 2010, Penthouse sent another good faith letter to Defendants again asking for those "reinsurance" agreements. Defendants responded by refusing to produce those documents. A *Good Faith Certificate* is attached as "Exhibit 1" showing Defendants oppose the issues raised in this motion.
5. Trial of this cause is set for a three week calendar beginning February 7, 2011. A settlement conference is scheduled to take place on October 21, 2010.

### **III. RELEVANT LAW**

6. Rule 26 of the Federal Rules of Civil Procedure provides, in relevant part, as follows:

Rule 26. Duty to Disclose; General Rules Governing Discovery

(a) Required Disclosures

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<sup>2</sup> Namely 0033-HIS, 510-KLN, 1206-GER, 780-ADV, 1245-JAT, 2010-MMX, 2488-AGM and 4444-CAN.

(1) Initial Disclosures.

(A) In General. Except as exempted by Rule 26 (a)(1)(B) or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties:

\* \* \*

(iv) for inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

**IV. ARGUMENT**

Pursuant to Rule 26 of the F.R.C.P., Penthouse is entitled to copies of all insurance agreements under which any insurer may be obligated to indemnify any of the Names on Penthouse's Policy for all or part of a payment to Penthouse.

A plain reading of Rule 26 requires Defendants to make the disclosures requested herein. Fed. Rule Civ. Proc. 26 (a)(1)(A)(iv); *See also Excelsior College v. Frye*, 233 F.R.D. 583 (S.D. Cal., 2006) and *Tardiff v. Knox County*, 224 F.R.D. 522 (D. Me., 2004)(stating that reinsurance agreements fall within the scope of documents required to be disclosed under F.R.C.P. 26 (a)(1)(A)(iv)).

Accordingly, Defendants should be compelled to comply with the requirements of Rule 26 and be made to produce copies of all insurance agreements under which an insurer may be liable to satisfy a judgment for Penthouse or to indemnify or reimburse any of the Names for all or part of a payment to Penthouse.

**WHEREFORE, PREMISES CONSIDERED,** Plaintiff Penthouse Owners Association respectfully asks that this Court compel Defendants to comply with the requirements of F.R.C.P.

26 (a)(1)(A)(iv) and to produce copies of all insurance agreements under which any insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment, and grant Plaintiff all other relief the Court deems proper.

RESPECTFULLY SUBMITTED on this the 16<sup>th</sup> day of August, 2010.

PLAINTIFF

PENTHOUSE OWNERS ASSOCIATION, INC.

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**CERTIFICATE OF SERVICE**

The undersigned counsel does hereby certify that he has on this date served the above and foregoing document on all counsel of record via the Court's ECF system:

ON THIS the 16<sup>th</sup> day of August, 2010.

/s/Gary Yarborough, Jr.